

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**DEFENDANT BUILD-A-BEAR WORKSHOP, INC.'S
ANSWER TO COMPLAINT FOR PATENT INFRINGEMENT,
AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

Defendant Build-A-Bear Workshop, Inc. (“Build-A-Bear”), by and through undersigned counsel, files its Answer to the Complaint (“Complaint”) filed by Plaintiff GeoTag, Inc. (“GeoTag”), and in support thereof states as follows:

PARTIES

1. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint and therefore denies the same.
2. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint and therefore denies the same.
3. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint and therefore denies the same.

4. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint and therefore denies the same.

5. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint and therefore denies the same.

6. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint and therefore denies the same.

7. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint and therefore denies the same.

8. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and therefore denies the same.

9. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint and therefore denies the same.

10. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint and therefore denies the same.

11. Admitted.

12. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and therefore denies the same.

13. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint and therefore denies the same.

14. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint and therefore denies the same.

15. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint and therefore denies the same.

16. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint and therefore denies the same.

17. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint and therefore denies the same.

18. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint and therefore denies the same.

19. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint and therefore denies the same.

20. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint and therefore denies the same.

21. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint and therefore denies the same.

22. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint and therefore denies the same.

23. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint and therefore denies the same.

24. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint and therefore denies the same.

25. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint and therefore denies the same.

26. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint and therefore denies the same.

27. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint and therefore denies the same.

28. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint and therefore denies the same.

29. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint and therefore denies the same.

30. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint and therefore denies the same.

31. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint and therefore denies the same.

32. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint and therefore denies the same.

33. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint and therefore denies the same.

34. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint and therefore denies the same.

35. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint and therefore denies the same.

36. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint and therefore denies the same.

37. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint and therefore denies the same.

38. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint and therefore denies the same.

39. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint and therefore denies the same.

40. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint and therefore denies the same.

41. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint and therefore denies the same.

42. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint and therefore denies the same.

43. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint and therefore denies the same.

44. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint and therefore denies the same.

45. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint and therefore denies the same.

46. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint and therefore denies the same.

47. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint and therefore denies the same.

48. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint and therefore denies the same.

49. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint and therefore denies the same.

50. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint and therefore denies the same.

51. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint and therefore denies the same.

52. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint and therefore denies the same.

53. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Complaint and therefore denies the same.

54. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint and therefore denies the same.

55. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint and therefore denies the same.

56. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint and therefore denies the same.

57. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint and therefore denies the same.

58. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the Complaint and therefore denies the same.

59. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint and therefore denies the same.

60. Build-A-Bear admits that Plaintiff alleges that this action arises under the patent laws of the United States, Title 35 of the United States Code and further admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), but Build-A-Bear denies that the underlying action has any merit as it relates to Build-A-Bear and further states that it is without knowledge or information sufficient to form a belief as to the truth of the

allegations contained in the first two sentences of paragraph 60 of the Complaint relating to the other Defendants and therefore denies the same. Build-A-Bear further admits that Plaintiff alleges that the Defendants are subject to this Court's specific and general personal jurisdiction, pursuant to due process and/or the Texas Long Arm Statute and that Plaintiff further alleges this is due to Defendants conducting substantial business in this forum, including related to the infringements alleged herein, but Build-A-Bear denies that it has infringed the patent-in-suit or taken any similar action to give rise to this Court's specific and general personal jurisdiction, other than conducting business in this District and Bear and further states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of paragraph 60 of the Complaint relating to the other Defendants and therefore denies the same. Build-A-Bear further admits that Plaintiff alleges that the Defendants are subject to the Court's general jurisdiction and that Plaintiff further alleges this is due to Defendants regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to persons or entities in Texas. Build-A-Bear further admits that it has conducted business and derived revenue from goods provided to persons in Texas. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the fourth sentence of paragraph 60 of the Complaint.

61. Build-A-Bear admits that venue is proper but denies that the underlying action has any merit as it relates to Build-A-Bear and further states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 61 of the Complaint relating to the other Defendants and therefore denies the same. Build-A-Bear admits that Plaintiff alleges that Defendants are subject to personal

jurisdiction in this district. Build-A-Bear further admits that Plaintiff alleges that the Defendants are subject to this Court's specific and general personal jurisdiction, pursuant to due process and/or the Texas Long Arm Statute and that Plaintiff further alleges this is due to Defendants conducting substantial business in this forum, including related to the infringements alleged herein, but Build-A-Bear denies that it has infringed the patent-in-suit or taken any similar action to give rise to this Court's specific and general personal jurisdiction, other than conducting business in this District and Bear and further states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second and third sentences of paragraph 61 of the Complaint relating to the other Defendants and therefore denies the same. Build-A-Bear admits that it has an interactive website which can be used in and/or accessible in this district, but denies that it has infringed the patent-in-suit or taken any similar action or that its website comprises infringing methods and apparatuses. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the fourth sentence of paragraph 61 of the Complaint. Build-A-Bear further admits that Plaintiff alleges that the Defendants are subject to the Court's general jurisdiction and that Plaintiff further alleges this is due to Defendants regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to persons or entities in Texas. Build-A-Bear further admits that it has conducted business and derived revenue from goods provided to persons in Texas. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the fifth sentence of paragraph 61 of the Complaint. Build-A-Bear states that the remaining allegations contained in paragraph 61 of the Complaint (sentences 6 through 9) are entirely duplicative of the prior allegations and therefore

Build-A-Bear makes the same answers to those allegations as it has above, which are incorporated with respect to these sentences. Build-A-Bear denies any remaining allegations contained in paragraph 61 of the Complaint.

62. Build-A-Bear admits that this Court previously heard a parallel action for infringement of the '474 patent in the suit referenced in the first sentence of paragraph 62 of the Complaint. Build-A-Bear admits that, in said suit, this Court considered certain terms and claims of the '474 patent, as set forth in the Court's Memorandum Opinion and Order issued on November 20, 2008. Build-A-Bear denies the remaining allegations contained in paragraph 62 of the Complaint.

63. Build-A-Bear admits that United States Patent No. 5,930,474 is entitled "INTERNET ORGANIZER FOR ACCESSING GEOGRAPHICALLY AND TOPICALLY BASED INFORMATION" and that the issue date of said patent is listed on the face of the patent as July 29, 1999. Build-A-Bear denies any remaining allegations contained in paragraph 63.

64. Plaintiff's allegation in paragraph 64 of the Complaint that "it has standing to bring this lawsuit for infringement of the '474 Patent" is not a factual allegation but rather a legal conclusion which Build-A-Bear has no obligation to answer. In any event, Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the Complaint and therefore denies the same.

65. Plaintiff's allegation in paragraph 65 of the Complaint regarding the coverage of the claim of the patent-in-suit is not a factual allegation but rather a legal conclusion which Build-A-Bear has no obligation to answer. Further, the patent-in-suit and its claims speak for themselves. Build-A-Bear denies any remaining allegations contained in paragraph 65.

66. Denied as to Build-A-Bear. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint as to any other Defendant and therefore denies the same. Build-A-Bear denies any remaining allegations contained in paragraph 66.

67. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint and therefore denies the same.

68. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint and therefore denies the same.

69. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint and therefore denies the same.

70. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint and therefore denies the same.

71. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the Complaint and therefore denies the same.

72. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the Complaint and therefore denies the same.

73. Denied.

74. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of the Complaint and therefore denies the same.

75. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of the Complaint and therefore denies the same.

76. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the Complaint and therefore denies the same.

77. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the Complaint and therefore denies the same.

78. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 of the Complaint and therefore denies the same.

79. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of the Complaint and therefore denies the same.

80. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint and therefore denies the same.

81. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the Complaint and therefore denies the same.

82. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the Complaint and therefore denies the same.

83. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 of the Complaint and therefore denies the same.

84. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the Complaint and therefore denies the same.

85. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 of the Complaint and therefore denies the same.

86. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the Complaint and therefore denies the same.

87. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the Complaint and therefore denies the same.

88. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88 of the Complaint and therefore denies the same.

89. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89 of the Complaint and therefore denies the same.

90. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the Complaint and therefore denies the same.

91. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the Complaint and therefore denies the same.

92. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92 of the Complaint and therefore denies the same.

93. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 of the Complaint and therefore denies the same.

94. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94 of the Complaint and therefore denies the same.

95. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 of the Complaint and therefore denies the same.

96. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the Complaint and therefore denies the same.

97. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 of the Complaint and therefore denies the same.

98. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98 of the Complaint and therefore denies the same.

99. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99 of the Complaint and therefore denies the same.

100. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100 of the Complaint and therefore denies the same.

101. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 101 of the Complaint and therefore denies the same.

102. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the Complaint and therefore denies the same.

103. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the Complaint and therefore denies the same.

104. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104 of the Complaint and therefore denies the same.

105. Build-A-Bear denies any allegation that it is or has been willfully infringing the patent in suit. Build-A-Bear further objects and denies that Plaintiff has the right to request such a finding at time of trial without first amending its complaint to make such an allegation, albeit baseless against Build-A-Bear. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the Complaint as to any other Defendant and therefore denies the same. Build-A-Bear denies any remaining allegations contained in paragraph 105.

106. Denied as to Build-A-Bear. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 106 of the Complaint as to any other Defendant and therefore denies the same. Build-A-Bear denies any remaining allegations contained in paragraph 106.

107. Build-A-Bear denies that Plaintiff is entitled to any of the relief requested in its Prayer for Relief as directed to Build-A-Bear. Build-A-Bear is without knowledge or information sufficient to form a belief as to the truth of the allegations contained or relief

requested in the Prayer for Relief as to any other Defendant and therefore denies the same. Build-A-Bear denies any remaining allegations contained or relief requested in the Prayer for Relief.

AFFIRMATIVE DEFENSES TO COMPLAINT

Build-A-Bear asserts the following affirmative and other defenses. Build-A-Bear has not yet had sufficient time and opportunity to collect and review all of the information that may be relevant to the matters raised herein and, furthermore, discovery of the Plaintiff has not yet begun. Build-A-Bear reserves the right to modify and/or expand these defenses and to take further positions and raise additional defenses as discovery proceeds in this case.

1. Build-A-Bear incorporates by reference, as if fully set forth herein, the preceding paragraphs of this Answer.
2. Plaintiff has failed to state any claim upon which relief may be granted.
3. Build-A-Bear has not infringed, contributorily infringed, and/or induced infringement of any valid or enforceable claim of U.S. Patent No. 5,930,474.
4. On information and belief, the asserted claims of U.S. Patent No. 5,930,474 are invalid for failure to comply with one of more of the conditions and requirements of patentability as set forth in the United States Patent Laws, 35 U.S.C. §§ 101, 102, 103, 112, and/or 132 and the rules, regulations, and laws pertaining thereto.
5. On information and belief, any claim for damages for patent infringement of U.S. Patent No. 5,930,474 is limited by the doctrine of laches, waiver, and estoppel.
6. On information and belief, any claim for damages for patent infringement of U.S. Patent No. 5,930,474 is limited at a minimum by 35 U.S.C. § 287 to those damages occurring only after the notice of alleged infringement.

7. On information and belief, Plaintiff's recovery for alleged infringement of U.S. Patent No. 5,930,474, if any, is limited to any alleged infringement committed no more than six years prior to the filing of its claims, pursuant to 35 U.S.C. § 286.

8. On information and belief and by reason of proceedings in the Patent and Trademark Office during the prosecution of the applications that resulted in U.S. Patent No. 5,930,474, as shown by their file histories, and by reason of the amendment, cancellation or abandonment of claims, and the admissions and other amendments made therein by or on behalf of the patentee, Plaintiff is estopped to claim a construction of any of U.S. Patent No. 5,930,474 that would cause any valid claim thereof to cover or include any product, system or method used by Build-A-Bear.

PRAAYER FOR RELIEF

WHEREFORE, Defendant Build-A-Bear prays:

- a. That Plaintiff takes nothing by its Complaint and that this Court enter a judgment in favor of Defendant Build-A-Bear and against Plaintiff on all claims for relief contained in the Complaint;
- b. That the Court enter judgment that the Complaint herein be dismissed with prejudice and without costs to Build-A-Bear;
- c. That the Court enter an order declaring that Build-A-Bear has not infringed any claims of U.S. Patent No. 5,930,474;
- d. That the Court enter an order declaring that the asserted claims of U.S. Patent No. 5,930,474 are invalid for failing the requirements of 35 U.S.C. §§ 101, 102, 103, 112, and/or 132;

- e. That the Court enter an order finding this case exceptional and awarding to Build-A-Bear its costs of suit and reasonable attorneys' fees, pursuant to 35 U.S.C. § 285; and
- f. That the Court awards Defendant Build-A-Bear any other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Build-A-Bear demands a trial by jury of all issues so triable.

COUNTERCLAIM

Defendant Build-A-Bear Workshop, Inc. ("Build-A-Bear") brings the following counterclaims against Plaintiff/Counterdefendant Geotag, Inc. ("Geotag").

JURISDICTION AND VENUE

1. This is an action for declaratory relief. This Court has jurisdiction over this counterclaim based on 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

2. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).

THE PARTIES

3. Defendant/Counterclaimant Build-A-Bear is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 1954 Innerbelt Business Center Drive, St. Louis, Missouri 63114.

4. On information and belief, Geotag is a Delaware corporation with a place of business in Plano, Texas.

FIRST COUNTERCLAIM
(Declaration of Non-infringement of the '474 Patent)

5. Build-A-Bear incorporates and realleges paragraphs 1 through 4 of these Counterclaims.

6. Geotag alleges that it is the owner of the '474 patent, and Geotag has brought suit against Build-A-Bear for infringement of the '474 patent.

7. The '474 patent is not infringed by any products, systems, or methods made, used, sold, offered for sale and/or imported by Build-A-Bear.

8. An actual case or controversy exists between Geotag and Build-A-Bear based on Geotag filing a Complaint against Build-A-Bear alleging infringement of the '474 patent.

9.

10. Build-A-Bear has been injured and damaged by Geotag filing a Complaint asserting the '474 patent, which is not infringed by Build-A-Bear.

11. Declaratory relief is both appropriate and necessary to establish that the '474 patent is not infringed by any products, systems, methods made, used, sold, and/or offered for sale by Build-A-Bear and thus cannot be asserted against Build-A-Bear.

SECOND COUNTERCLAIM
(Declaration of Invalidity of the '474 Patent)

12. Build-A-Bear incorporates and realleges paragraphs 1 through 11 of these Counterclaims.

13. Geotag alleges that it is the owner of the '474 patent, and Geotag has brought suit against Build-A-Bear for infringement of the '474 patent.

14. The '474 patent is invalid for failing to comply with the provisions of the patent laws, 35 U.S.C. § 1, *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, 112 and 132.

15. An actual case or controversy exists between Build-A-Bear and Geotag based on Geotag filing a Complaint against Build-A-Bear alleging infringement of the '474 patent.

16. Build-A-Bear has been injured and damaged by Geotag filing a Complaint asserting the '474 patent, which is invalid.

17. Declaratory relief is both appropriate and necessary to establish that the '474 patent is invalid, and thus cannot be asserted against Build-A-Bear.

PRAAYER FOR RELIEF

WHEREFORE, Build-A-Bear prays for relief as follows:

1. That Geotag's Complaint be dismissed with prejudice and that Geotag recover nothing thereon;

2. That the Court enter judgment declaring the '474 patent not infringed by Build-A-Bear or the use of products, systems, or methods made, sold, offered for sale and/or imported by Build-A-Bear;

3. That the Court enter judgment declaring the '474 patent invalid;

4. That the Court order Geotag to pay Build-A-Bear its costs and attorneys' fees; and

5. That the Court grant such other relief as the Court deems just and proper under these circumstances.

DEMAND FOR JURY TRIAL

Build-A-Bear demands a trial by jury of all claims and issues so triable.

Dated: February 11, 2011

Respectfully submitted,

By: /s/ John R. Mercy

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ATTORNEYS FOR DEFENDANT
Build-A-Bear Workshop, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2011, a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this paper was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy via facsimile and/or certified mail, return receipt requested.

/s/ John R. Mercy

John R. Mercy